IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

WRIT PETITION NO. 8 /~~1999~~ 2000

(MEMO OF WRIT PETITION UNDER ARTICLE-226 OF THE)
CONSTITUTION OF INDIA

PETITION UNDER ARTICLES-226 & 227 OF THE CONSTITUTION OF INDIA FOR WRITS IN THE NATURE OF CERTIORARI MANDAMUS PROHIBITION ETC. AND FOR APPROPRIATE FURTHER DIRECTIONS(.)

PETITIONER : S.J.Patil, aged about 46 years, S/o.J.B.Patil, Occu:Ex.Head Constable No.764500626, Rajhara Mine, B.S.P., BHILAI - 01, r/o.Village:Gates-Khurd, Post:Kona, Tahsil:Wada, DISTRICT:THANE(MAHARASHTRA)

- versus -

RESPONDENTS :

1. Union of India, Through: Ministry of Home Affairs, North Block, NEW DELHI.
2. Dy.Inspector General, Central Industrial Security Force, CISF Unit BSP, BHILAI (M.P.).
3. Commandant, Central Industrial Security Force (CISF Unit), Bhilai Steel Plant, BHILAI, DISTRICT:DURG (M.P.).

Surendra Kumar Khare S.K.Khare Oath Commissioner

DETAILS OF THE PETITION

1. PARTICULARS OF THE PETITIONER :

As above.

2. PARTICULARS OF THE RESPONDENTS :

As above.

3. PARTICULARS OF THE ORDER AGAINST WHICH THE PETITION IS FILED :

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 8 of 2000

S. J. Patil

-Versus-

Union of India and others

Post for order on 5th April, 2006.

Sd/-
Satish K. Agnihotri
Judge

(99)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 8 of 2000

S. J. Patil

-Versus-

Union of India and others

Shri Sudhir Verma, Advocate for the petitioner.

Shri S. K. Beriwal, Advocate for the Respondent No.1

ORDER

(April 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. In the instant petition, the petitioner, being aggrieved by the order of removal dated 10/20 July, 1999 (Annexure A/5), filed this petition under Article 226/227 of the Constitution of India challenging validity of the order of removal dated 10/20 July, 1999 and the order dated 28.9.1999 (Annexure A/7) passed by the appellate authority, confirming the order passed by the disciplinary authority and further seeking a direction for reinstatement with full back wages and consequential reliefs.

2. The facts in nutshell are that the petitioner was working as Head Constable in Central Industrial Security Force and was posted at Rajhara Mines of Bhilai Steel Plant at the relevant time.

3. On 22nd February, 1999 (Annexure A/1) the petitioner was served with charge sheet to the effect that "the petitioner-constable while posted at outpost Bordeeh of Rajhara mines, left the post without permission of the competent officer at 17.00 hours on 31.1.1999 for going to market to purchase vegetables. After purchasing vegetables the petitioner/ employee consumed liquor and at 7.30 disturbed the

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public peace in front of Ahuja Kirana Stores by abusing, jostling and assaulting the members of the public. As a result, atmosphere of discontentment was created and image of the force was lowered down by the misconduct committed by the employee/petitioner."

4. The petitioner submitted his reply to the charge sheet on 4.3.1999 (Annexure A/2) stating that there was no arrangement for food and snacks at the post and as such, he had to leave the post for market to arrange the same. With regard to the obtaining of prior permission of the competent authority the petitioner submitted that there was no facility for obtaining permission as the competent officer was available at a distance of 10 k.m.s. away from the post. He further denied the incident of abuse, thereat and assault with the public at 10.30 in front of Ahuja Kirana Stores, Rajhara whereby the image of the force was lowered down. The petitioner further denied all the allegations, being baseless and concocted.

5. A proper enquiry was conducted and enquiry report was submitted on 29.5.1999. The petitioner was again sent a show cause notice along with a copy of the enquiry report on 9th June, 1999 (Annexure A/3), calling upon the petitioner to submit his response within 15 days so that necessary action could be taken by the authorities. The petitioner submitted his reply (Annexure P/4) to the notice dated 9.6.1999, not agreeing with the enquiry report stating that he was not given full opportunity to defend his case. It was incorrectly held by the enquiry officer that under drunken condition on 31.1.1999 he indulged in abusing, jostling and assaulting the public, when he was not medically examined in order to assess his condition. He also did not agree with the deposition of the witnesses. However, at the end, the petitioner submitted that in case, he was found guilty of indiscipline

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he should be pardoned for the same and he would not repeat the same in future.

6. The disciplinary authority, the Respondent No.3 by his order dated 10th/20th July 1999 after having considered findings of the enquiry report and reply of the petitioner came to the conclusion that the petitioner has admitted consumption of beer and the petitioner has further admitted that he had left the post without permission of the competent officer. In view of the grave misconduct committed by the petitioner, the petitioner was removed from service by order dated 10th/20thJuly, 1999. The period of suspension was treated as period under suspension with subsistence allowance as paid to him.

7. Being aggrieved, the petitioner filed an appeal (Annexure A/6) before the Deputy Inspector General of the Central Industrial Security Forces/Respondent No.2. In his memo of appeal, he admitted that though he had consumed beer but it was not in such quantity as to cause him out of control, as he was driving his cycle with full confidence. He further stated that he, being a responsible member of the force, did not indulge into the abusing, jostling and assaulting with the public, as he knew that he has to work with discipline in the police force. It was further stated that presence of senior officer was not correct and there was no discontentment in the public. The respondent No.2 by order dated 28.9.1999 (Annexure A/7) affirmed the findings recorded by the enquiry officer and confirmed by the disciplinary authority and further confirmed the order of removal passed by the Respondent No.2 – disciplinary authority.

8. Shri Sudhir Verma, learned counsel appearing for the petitioner contended that the impugned order passed by the disciplinary authority as well as the appellate authority is perverse on the ground that the authorities concerned have not considered the fact that there

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was no facility of food-snacks at the post and as such the petitioner had to go for vegetables in the market. It was further contended that it was true that the petitioner had consumed beer but admittedly the effect of the beer was not such so as to cause any effect on the petitioner. Learned counsel further contended that this is a fundamental right of the petitioner under Article 21 of the Constitution of India to go and have food when the same was not available. With regard to not obtaining permission of the competent authority before leaving the post, it was contended that there was no facility of telephone or availability of any other person at that point of time, therefore it was not possible to obtain the permission of the competent authority before leaving the post.

9. Shri S. K. Beriwal, learned counsel for the respondents, per contra, contended that it has been found proved in the enquiry that the phone facility was available at the post on that day and at that point of time, the phone was very much in order, as such the submission of the petitioner that there was no phone facility is incorrect and baseless. With regard to the findings of consumption of liquor it has been admitted by the petitioner that he had consumed beer. The consumption of beer is strictly prohibited during the time of duty in service and leaving the post in force amounts to grave misconduct. The petitioner was rightly removed from service. With regard to the other contentions that there was no public discontentment and the petitioner did not indulge in abusing, jostling, assaulting and misbehaving with the public, it was contended that it was not correct as the enquiry officer has found proved that the petitioner was given sufficient show cause notice, he participated in the proceeding and the conclusion arrived at by the enquiry officer, and confirmed by the

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disciplinary authority was based on the substantial and cogent evidence.

10. Learned counsel further referred to para 5(e) of the reply filed by the respondent to contend that the contention of the petitioner that he was never punished in the past is not correct, as is evident from the following :-

"PARA No. 5(e) : That the averments made in this para are incorrect and baseless. The past record of the petitioner was not a part of charge and hence, it was not necessary for considering his past record of service. However, it is stated that the past record of the petitioner is not satisfactory. The petitioner was awarded the following punishments for his various acts of misconduct before this removal from service. Hence, his contention that his past record of service was good is nothing but only an utter falsification truth.

1. On 04.06.79 he withdraw himself : CENSURE from duty within the meaning of section 18 of CISF Act 1968.

2. He was detailed 'C' shift duty from 2130 hrs on 13.10.90 to 0530 hrs 14.10.90 while checked by ASI/Exe L D Mohanty and found flat sleeping on iron bench.	:	Awarded the punishment withholding of one increment for a period one year without cumulative effect vide final order dt. 17.11.90.
3. Overstayed on leave wef 13.03.91 to 18.03.91 for 06 days	:	07 days pay fine vide final order dt. 01.05.91.
4. OSL wef 31.03.98 to 31.05.98 for 62 days.	:	Reduction of pay by one stage for a period of one year which will not have the effect of postponing his future increment of pay vide final order dt. 19.02.99."

11. I have heard learned counsel for the parties and perused the records appended to the pleadings.

12. In the case of **B.C. Chaturvedi v. Union of India** { (1995) 6 SCC 749 } the Supreme Court in para-18 has observed as under :-

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"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the Appellate Authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

13. The Supreme Court in the case of **State of U.P. and others Vs. Ashok Kumar Singh and another** { (1996) 1 S.C.C. 302} in para 8 has observed as under:-

"8. We are clearly of the opinion that the high Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that "his absence from duty would not amount to such a grave charge." Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that "the punishment does not commensurate with the gravity of the charge" especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

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14. In the case of **Union of India v. G. Ganayutham** {(1997) 7 SCC 463} the Supreme Court has summed up the position relating to proportionality in paras 31 and 32, which read as follows:-

"31. The current position of proportionality in administrative law in England and India can be summarized as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury[4] test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU[5] principles.

(3) (a) As per Bugdaycay[20], Brind[11] and Smith[21] as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedom as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury[4] and CCSU[5] principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4) (b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of 'proportionality'. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to 'irrationality', there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in 'outrageous' defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain 'Rajit Thakur[22]."

15. The Supreme Court in **Kuldeep Singh Vs. Commissioner of Police and others** {(1999) 2 SCC 10} in para 6 has observed as under:

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its

stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

16. The Supreme Court in the case of **V. Ramana Vs. A. P. SRTC and others** {(2005) 7 SCC 338} in paragraph 11 has observed as under:-

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case[4] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

17. The Supreme Court Supreme Court in **State of Rajasthan and another Vs. Mohd. Ayub Naz** {(2006) 1 S.C.C. 589}, in para 10 has observed as under:-

"10. This Court in Om Kumar v. Union of India[1] while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for."

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18. The Supreme Court in **Syndicate Bank and others Vs. Venkatesh Gururao Kurati** { (2006) 3 SCC 150} in para 5 has observed as under:-

> "5. In our view, this is no ground for converting the order of removal from service into compulsory retirement. On the question of punishment being disproportionate to the charges framed and proved, we are of the view that the charges framed and proved are grievous in nature, which would normally attract removal from service, if such charges were proved. We are also of the view that sentiments and compassion have no role to play in such a situation when the gravity of misconduct such as this has been found well proved against the respondent."

19. In view of the various decisions of the Supreme Court, cited above and having regard to the facts and circumstances of the case, there is no irrationality, illegality or procedural irregularity which require interference with the findings of the enquiry report and the decision of the disciplinary authority for imposition of punishment of removal from service. In the present case the petitioner has not filed enquiry report, as to point out any procedural irregularity or perversity in the process while recording the findings against the petitioner. The petitioner has admitted that he had left the post without permission of the competent officer, leaving the post unattended was likely to cause security problem and untoward incident in the mines. The contention of the petitioner that it was his right to leave the post as food/snacks at 5 O'clock in the evening was not available, is not sustainable. No reasonable person, when he has been assigned the job of security of a particular area, requires food at 5 O'clock in the evening and even if the petitioner was in need of some food he could have very well informed the competent officer who was available on phone and sought his permission for going to the market to arrange some food.

Further admittedly, the consumption of liquor is considered to be a serious offence in the police force. The Supreme Court in the case of **State of U.P. and others Vs. Ashok Kumar Singh and another** (supra) has observed that a police constable, serving in disciplined force, which demands strict adherence to the rules and procedure more than any other department, in absenting himself from duty without permission has committed grave misconduct.

20. With regard to disproportionate punishment, as contended by learned counsel for the petitioner, the petitioner has failed to prove as to why the removal from service in disciplined force i.e. security forces is disproportionate to the charges, when the petitioner had committed serious charges earlier also. In the facts of the case, the punishment of removal of the petitioner from service is not shockingly disproportionate to the charges.

21. For the reasons stated above, the writ petition fails and is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur